

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.11164 OF 2021

1. Dilip @ Keshav s/o Parvat Dighe
Age: 52 years, Occu: Agri.

2. Rutuja w/o Dilip Dighe
Age: 46 years, Occu: Household

Both r/o Dhanore, Tq. Rahuri
Dist. Ahmednagar

... Petitioners
(Orig. Opponent Nos.1 & 2)

Versus

1. The District Collector,
Ahmednagar

2. The Sub Divisional Officer,
Shrirampur Division, Shrirampur,
Tq. Shrirampur, Dist. Ahmednagar

3. Ratnabai w/o Parvat Dighe
Age: 76 years, Occu: Nil,

4. Varsha w/o Rajendra Dighe
Age: 45 years, Occu: Household

5. Varun s/o Rajendra Dighe
Age: 21 years, Occu: Education
Respondent No.3 to 5, R/o Dhanore,
Tq. Rahuri, Dist. Ahmednagar

... Respondents
(Respt. No.3/ Orig. Applicant
Respt. Nos.3 & 4/ Orig. Opponent)

...

Mr. R. R. Karpe, Advocate for the Petitioners
Mr. S. N. Kendre, AGP for Respondent Nos.1 & 2/State
Mr. R. A. Tambe, Advocate for Respondent No.3
Mr. A. C. Darandale, Advocate for Respondent Nos.4 & 5

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 29th August, 2022

ORAL JUDGMENT :-

1. This petition filed under Article 226 and 227 of the Constitution of India, impugns the order dated 29-01-2021, passed by respondent no.2/Sub-Divisional Officer, Shrirampur Division, Shrirampur in the capacity of President, Maintenance of Parents and Senior Citizen Act, 2007 (for short 'the said Act') in favour of respondent no.3 and the order 06-08-2021 passed by respondent no.1/District Collector, Ahmednagar, thereby rejecting the appeal filed by the petitioners on the ground of maintainability.

2. Respondent no.3 filed Inquiry Application No.6/2020 before respondent no.2 under Section 23 of the said Act against son/petitioner no.1 and daughter-in-law/petitioner no.2 contending that petitioner no.1 has entered his name to her agricultural land gat no.311/1 and to the Grampanchayat house property no.19. When she came to know about the same, she asked petitioner no.1 to return the said properties. However, he refused the same and claimed that mother has no concern with both the properties and she is not entitled to claim income from agricultural land. The petitioners owe a moral duty to maintain the mother, however, they have never maintained her. Hence, she claimed that the said properties be transferred in her name.

3. The petitioners appeared and resisted the said application by filing say. The petitioners denied the contentions of the mother stating that petitioner no.1 has given education to respondent no.5 and his sister. The Grampanchayat Property No.160 was transferred in the name of petitioner no.1 by the parents, when father was alive. He, thereafter, constructed RCC structure on the said property by spending Rs.5,00,000/- and gave the same on rent to Urban Bank. The rent amount was paid to respondent no.3/mother only. The mother is being looked after by the petitioners. Mother has already sold some portion of Gat No.311. As per Hindu law, wife has no right to claim share in the ancestral properties of the husband. A Regular Civil Suit No.522/2020 filed by respondent no.5 is pending before the Civil Judge, Senior Division, Rahuri. An amount of Rs.65,774/- is lying in the account of mother in the State Bank of India Branch at Satral. He further contended that he is ready to take care of the mother and he is also ready to take her at the transferred places wherever he is posted.

4. The respondent no.2, after hearing the parties, and considering the documents, allowed the application and directed that name of respondent no.3/mother be entered to the agricultural land as well as house property. In the order, it is further recorded that if the petitioners are aggrieved by the said order, within sixty

days, they have to file appeal before the Appellate Authority provided under the said Act.

5. The petitioners challenged the order passed by respondent no.2 by filing an appeal along with delay condonation application before respondent no.1. By order dated 06-08-2021, the said appeal is dismissed, being not maintainable. The petitioners are aggrieved by both these orders.

6. Heard the learned Advocate for the petitioners, the learned Assistant Government Pleader for respondent nos.1 & 2, the learned Advocate for respondent no.3 and the learned Advocate for respondent nos.4 & 5.

7. The learned Advocate for the petitioners by relying on the Division Bench judgment of Punjab & Haryana High Court in **Paramjit Kumar Saroya Vs. The Union of India & Anr.** reported in **AIR 2014 Punjab & Haryana 121** as well as judgments of learned Single Judge of Delhi High Court in **Rakhi Sharma Vs. State** reported in **LAWS (DLH) 2021-3-256** and High Court of Karnataka in **M. Sunita (Vidyasri) Vs. M. Shashikala Mugadura** reported in **LAWS KAR 2021-7-148**, submits that respondent no.1 has committed error in holding that appeal filed by the petitioners is not maintainable in terms of Section 16 of the said Act. He submits

that the Division of Punjab and Haryana High Court has specifically held that remedy of filing appeal must be read to provide for the right of appeal to any of the affected parties. By interpreting provisions of Section 16 of the said Act, the learned Division Bench has arrived at the said conclusion. The said decision is followed by the Single Bench of Karnataka High Court and Single Bench of Delhi High Court. He, therefore, submits that the appeal filed by the petitioners was maintainable in view of the said decisions and the same could not have been dismissed on the ground of maintainability.

8. Assailing the impugned order on merits he submits that, no reasonable and fair opportunity of hearing was given to the petitioners to lead evidence. By relying on the provision of Sections 4, 8, 16 and 23 of the said Act, he submits that proceeding filed by respondent no.3 under Section 23 of the said Act, itself was not maintainable, in absence of transfer of properties after commencement of the said Act. He also assailed the impugned order on the ground that the impugned order is un-reasoned order and therefore, it cannot be sustained. He, therefore, submits that writ petition deserves to be allowed by setting aside both the impugned orders.

9. Per contra, the learned Advocate for respondent no.3 has supported the impugned orders. By relying on the Division Bench decision of Madras High Court in **K. Raju Vs. Union of India & Ors.** reported in **AIR 2021 MADRAS 72**, he submits that the Madras High Court has correctly interpreted Section 16 of the said Act and has disagreed with the view taken by the learned Division Bench of Punjab and Haryana High Court and held that in terms of Section 16(1) of the said Act, any class of persons other than any senior citizen or parent have no right to file appeal. He, therefore, submits that respondent no.1 was right in dismissing the appeal filed by the petitioners on the ground of maintainability.

10. On merit, he submits that, sale deed in the year 2001, which is contended by the petitioners was executed during the life time of the husband of third respondent. It was for the family necessity. The husband of third respondent expired on 05-05-2008 and the petitioner no.1 has entered his name to the disputed properties by Mutation Entry No.2942 dated 03-07-2009 and Mutation Entry No.3029 dated 06-08-2010. Thus, according to him, the name was entered by the petitioners after the commencement of the said Act and therefore, respondent no.2 was justified in entertaining the proceeding filed by third respondent. By relying on the judgment of this Court in **Dattatrey Shivaji Mane Vs. Lilabai Shivaji Mane &**

Ors. reported in **2018(6) Mh.L.J. 681**, he submits that, respondent no.2 was justified in passing the order in favour of third respondent. According to him, petition is devoid of merit and the same is liable to be dismissed.

11. The learned Assistant Government Pleader supports the impugned orders.

12. Before considering the rival submissions, it is apposite to consider the relevant provisions of the said Act;

"16 Appeals - —

(1) Any senior citizen or a parent, as the case may be, aggrieved by an order of a Tribunal may, within sixty days from the date of the order, prefer an appeal to the Appellate Tribunal: Provided that on appeal, the children or relative who is required to pay any amount in terms of such maintenance order shall continue to pay to such parent the amount so ordered, in the manner directed by the Appellate Tribunal: Provided further that the Appellate Tribunal may, entertain the appeal after the expiry of the said period of sixty days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.

(2) On receipt of an appeal, the Appellate Tribunal shall, cause a notice to be served upon the respondent.

(3) The Appellate Tribunal may call for the record of proceedings from the Tribunal against whose order the appeal is preferred.

(4) The Appellate Tribunal may, after examining the appeal and the records called for either allow or reject the appeal.

(5) The Appellate Tribunal shall, adjudicate and decide upon the appeal filed against the order of the Tribunal and the order of the Appellate Tribunal shall be final: Provided that no appeal shall be rejected unless an opportunity has been given to both the parties of being heard in person or through a duly authorised representative.

(6) The Appellate Tribunal shall make an endeavour to pronounce its order in writing within one month of the receipt of an appeal.

(7) A copy of every order made under sub-section (5) shall be sent to both the parties free of cost.

23. Transfer of property to be void in certain circumstances. —

(1) Where any senior citizen who, after the commencement of this Act, has transferred by way of gift or otherwise, his property, subject to the condition that the transferee shall provide the basic amenities and basic physical needs to the transferor and such transferee refuses or fails to provide such amenities and physical needs, the said transfer of property shall be deemed to have been made by fraud or coercion or under undue influence and shall at the option of the transferor be declared void by the Tribunal.

(2) Where any senior citizen has a right to receive maintenance out of an estate and such estate or part thereof is transferred, the right to receive maintenance

may be enforced against the transferee if the transferee has notice of the right, or if the transfer is gratuitous; but not against the transferee for consideration and without notice of right.

(3) If, any senior citizen is incapable of enforcing the rights under sub-sections (1) and (2), action may be taken on his behalf by any of the organisation referred to in Explanation to sub-section (1) of section 5."

13. Language used in Section 16 of the said Act is plain, clear and simple. It provides remedy of appeal only to the senior citizen or parent as the case may be, who is aggrieved by an order of the Tribunal. It is settled legal position that, remedy of appeal is a statutory remedy and it can be availed only if it is provided for. In **Arcot Textile Mills Limited Vs Regional Provident Fund Commissioner and Others** reported in **(2013) 16 SCC 1**, it is held;

"On a scrutiny of Section 7-I, we notice that the language is clear and unambiguous and it does not provide for an appeal against the determination made under 7Q. It is well settled in law that right of appeal is a creature of statute, for the right of appeal inheres in no one and, therefore, for maintainability of an appeal there must be authority of law. This being the position a provision providing for appeal should neither be construed too strictly nor too liberally, for if given either of these extreme interpretations, it is bound to adversely affect the legislative object as well as hamper

the proceedings before the appropriate forum. Needless to say, a right of appeal cannot be assumed to exist unless expressly provided for by the statute and a remedy of appeal must be legitimately traceable to the statutory provisions. If the express words employed in a provision do not provide an appeal from a particular order, the court is bound to follow the express words. To put it otherwise, an appeal for its maintainability must have the clear authority of law and that explains why the right of appeal is described as a creature of statute."

14. In view of the above legal proposition, since Section 16 of the said Act does not provide for appeal to any other persons other than senior citizen or parents, the legislative object is clear that appellate remedy is only provided to senior citizen or parents and none others. Since right of appeal cannot be assumed to exist unless expressly provided for by the statute and as the same must be legitimately traceable to the statutory provisions and as the express words employed in Section 16 of the said Act do not provide an appeal to any other person aggrieved, I am of the considered view that the express words have to be followed and remedy of appeal to anybody else cannot be read in Section 16 of the said Act.

15. Strong reliance is placed by the learned Advocate for the petitioners in the learned Division Bench decision of Punjab and

Haryana High Court in Paramjit Kumar Saroya (*Supra*), wherein, it is held that:

*"31. Now coming to the conspectus of the discussion aforesaid, we have no doubt in our mind that we would be faced with the serious consequences of quashing such a provision which deprives the right of one party to the appeal remedy, while conferring it on the other especially in the context of the other provisions of the same Section as well as of the said Act. We have to avoid this. The only way to avoid it is to press into service both the principles of purposive interpretation and casus omissus. The Parliamentary discussions on the other provisions of the said Act do not convey any intent by which there is any intent of the Parliament to create such a differentiation. There is no point in repeating what we have said, but suffice to say that if nothing else, at least to give a meaning to the first proviso of Section 16(1) of the said Act, the only interpretation can be that the right of appeal is conferred on both the sides. It is a case of an accidental omission and not of conscious exclusion. Thus, in order to give a complete effective meaning to the statutory provision, we have to read the words into it, the course of action even suggested in N. Kannadasan's case (*supra*) in para 55. How can otherwise the proviso to sub section (1) be reconciled with sub section itself. In fact, there would be no need of the proviso which would be made otiose and redundant. It is salutary role of construction of the statute that no provision should be made superfluous. There is no negative provision in the*

Act denying the right of appeal to the other parties. The other provisions of the Act and various sub sections discussed aforesaid would show that on the contrary an appeal from both sides is envisaged. Only exception to this course of action is the initial words of sub section (1) of Section 16 of the said Act which need to be supplanted to give a meaning to the intent of the Act, other provisions of the said Act as also other sub sections of the same Section of the said Act. In fact, in Board of Muslim Wakfs Rajasthan's case (AIR 1979 SC289) (supra), even while cautioning supply of casus omissus, it has been stressed in para 29 that the construction which tends to make any part of the statute meaningless or ineffective must always be avoided and the construction which advances the remedy intended by the statute should be accepted. This is the only way we can have a consistent enactment in the form of whole statute.

32. We are thus of the view that Section 16(1) of the said Act is valid, but must be read to provide for the right of appeal to any of the affected parties".

16. Thus, the learned Division Bench of Punjab High Court has held that to give meaning to the first proviso of Section 16(1) of the said Act, the only interpretation can be that the right of appeal is conferred on both the sides. It is a case of an accidental omission and not of conscious exclusion. The learned Division Bench, therefore, in order to give a complete effective meaning to the

statutory provision, has read the words into it, and has held that the right of appeal under Section 16(1) of the said Act is available to any of the affected parties.

17. The said decision is followed by the learned Single Bench of Karnataka High Court in M. Sunitha (Vidyasri) (*Supra*) and Delhi High Court in Rakhi Sharma (*Supra*).

18. In K. Raju (*Supra*), the learned Division Bench of the Madras High Court has respectfully disagreed with the view taken by the Punjab and Haryana High Court for following reasons;

"5. The words used in the provision are lucid and, by no stretch of imagination, can such clear words of the statute be read or understood or interpreted to imply that any class of persons other than any senior citizen or a parent may be entitled to prefer an appeal under such provision. The terms "senior citizens" and "parent" are defined in Section 2 of the Act. The word "Tribunal" is also defined to mean the Maintenance Tribunal as constituted under Section 7 of the Act.

6. It is elementary that an appeal is a creature of a statute and no right of appeal inheres in any person unless such right is expressly conferred by any statute. It is possible for a right of appeal to be hedged with conditions or even a right of appeal to be granted to a class of persons and not granted to another. It is the wisdom of the legislature to decide what classes of persons would be entitled to the right of appeal and

what conditions may be attached to the exercise of such right and how such right may be exercised.

7. At the highest, an appellate provision may be assailed as unreasonable as falling foul of the constitutional principles, particularly under Article 14 thereof. But merely because a class of persons has been conferred the right to prefer an appeal while another class may have not been given such right, ipso facto, would not make the appellate provision vulnerable to any challenge under Article 14 of the Constitution. Indeed, the right of appeal that inheres in a party to the lis at the time of initiation of the lis may also be subsequently taken away by legislature, the only caveat being that such a right must be expressly taken away and such right cannot be seen to be extinguished by implication.

8. The petitioner relies on a judgment of the Punjab and Haryana High Court reported at AIR 2014 P&H 121 (Paramjit Kumar Saroya v. The Union of India). There is no doubt that such judgment concludes, upon a reading of Section 16 of the Act, that any person aggrieved by an order of the Tribunal may prefer an appeal. However, we have not been able persuade ourselves to concur with the view. For the reasons indicated hereinabove, we respectfully disagree.

9. When the clear words of a statute do not permit any other meaning or interpretation, particularly when it pertains to a right of appeal, additional words cannot be read into the provision to discover a right in favour of a class of persons excluded by necessary implication in

the appellate provision. When the words used in Section 16 of the Act are "Any senior citizen or a parent ... aggrieved by order of a Tribunal may ... prefer an appeal..." and the other words govern the time or describe the senior citizens or the parent in the alternative, there is no room to imagine that others aggrieved by an order of the tribunal may also prefer an appeal on the ground that the scales must be balanced between the two sides."

19. I am in respectful agreement with the view taken by the learned Division Bench of Madras High Court. In my opinion, the view of the learned Division Bench of Madras High Court is in consonance with the aim and object of the said Act and Section 16 is rightly interpreted by the learned of Division Bench of Madras High Court. Therefore, I am inclined to accept the view taken by the Madras High Court in K. Raju (*Supra*) as against the view taken by Punjab & Haryana High Court in Paramjit Kumar Saroya (*Supra*).

In the light of above, in my opinion, respondent no.1 is justified in holding that appeal filed by petitioners is not maintainable.

20. Coming to the challenge of learned Advocate for petitioners to the impugned order on merits, it is not possible to accept the submissions that application filed by respondent no.3 under Section 23 of the said Act was not maintainable, since relief claimed with the said application was beyond the scope of Section 23.

21. In *Dattatrey Shivaji Mane (Supra)*, eviction order passed in favour of parents, by the Tribunal constituted under the said Act, was challenged before this Court on the ground that, eviction order is beyond the scope of Section 23 of the said Act. Repelling the challenge, learned Single Judge of this Court held;

"23. The Objects and Reasons of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 read thus :-

"1. Traditional norms and values of the Indian society laid stress on providing care for the elderly. However, due to withering of the joint family system, a large number of elderly are not being looked after by their family. Consequently, many older persons, particularly widowed women are now forced to spend their twilight years all alone and are exposed to emotional neglect and to lack of physical and financial support. This clearly reveals that ageing has become a major social challenge and there is a need to give more attention to the care and protection for the older persons. Though the parents can claim maintenance under the Code of Criminal Procedure, 1973, the procedure is both time consuming as well as expensive. Hence, there is a need to have simple, inexpensive and speedy provisions to claim maintenance for parents.

2. The Bill proposes to cast an obligation on the persons who inherit the property of their aged relatives to maintain such aged relatives and also proposes to make provisions for setting up old age homes for providing

maintenance to the indigent older persons.

The Bill further proposes to provide better medical facilities to the senior citizen and provisions for protection of their life and property.

3. The Bill, therefore, proposes to provide for :-

(a) appropriate mechanism to be set-up to provide need-based maintenance to the parents and senior citizens;

(b) providing better medical facilities to senior citizens;

(c) for institution alisation of a suitable mechanism for protection of life and property of older persons;

(d) setting-up of old age homes in every district.

4. The Bill seeks to achieve the above objectives."

24. In so far as the submission of the learned counsel for the petitioner that under Section 4 of the said Act, no order of the eviction can be passed by the Tribunal but the said provision could be invoked only for the purpose of making a claim for maintenance is concerned, Delhi High Court in the case of Sunny Paul & Anr. Vs. State Nct of Delhi & Ors. (supra) has considered the said issue at great length and has held that the claim for eviction is maintainable under Section 4 of the said Act read with various other provisions of the said Act by a senior citizen against his children and also the grand children.

27. Delhi High Court in the case of Nasir vs. Govt. of NCT of Delhi and ors. (supra) while dealing with the matter under the provisions of the same Act and has held that once it is found that a senior citizen was the owner of the subject property, no error can be found with the directions issued by the Tribunal restraining the child of such senior citizen from interfering with the possession of the senior citizen who was the mother of the petitioner in that matter occupying the property and/or from recovering the rental income of the other property and further directing the son to maintain peace in the house and not to disturb his aged mother. It is held that in such situation, if it is said that the respondent mother ought to have been relegated by the Tribunal to the Civil Court, the same would have been in negation of the very purpose of setting up of such Tribunal. It is held that while interpreting the provisions, object of the Act has to be kept in mind which is to provide simple, inexpensive and speedy remedy to the parents and senior citizens who are in distress, by a summary procedure. The provisions have to be liberally construed as the primary object is to give social justice to parents and senior citizens.

28. Delhi High Court in the said judgment has adverted to the judgment of the Supreme Court in the case of Board of Muslim Wakfs, Rajasthan Vs. Radha Kishan- 1979(2) SCC 468 in which Supreme Court has held that the construction which tends to make any part of the statute meaningless or ineffective must always be avoided and the construction which advances the remedy intended by the statute should be accepted. In my view, the principles of law laid down by

the Delhi High Court in the case of Nasir Vs. Govt. of NCT of Delhi & Ors. (supra) and the judgment of the Supreme Court in the case of Board of Muslim Wakfs, Rajasthan Vs. Radha Kishan (supra) apply to the facts of this case. I am in respectfully agreement with the views expressed by the Delhi High Court in the said judgment. The principles of law laid down by the Supreme Court in the aforesaid judgment are binding on this Court.”

30. After adverting to the objects and reasons of the said Act, Gujarat High Court has held that on overall consideration and having regard to the provision under Sections 2(b), 2(d), 2(f) 4 and the object of the Act, the said term should receive wider meaning so as to include possession/occupation of property, as well. The said concept is already recognised, accepted and internalised by the Act vide Section 4 of the Act. It is held that the provisions under Section 23 of the Act cannot be, and need not be, read in isolation or by divorcing the said provision from other provisions, particularly Section 4 of the Act read with Sections 2(b), 2(f), 2(g) & 2(h) of the Act. Gujarat High Court accordingly rejected the writ petition of the son impugning the order of the Tribunal directing him to hand over possession of the property to the father and held that the said order passed by the Tribunal to hand over possession could not be said to be without jurisdiction or beyond the scope of Section 23 read with Section 4, 2(b), 2(d) and 2(f) of the Act. In my view, the principles of law laid down by the Gujarat High Court Jayantram Vallabhdas Meswania Vs. Vallabhdas Govindram Meswania (supra) applies to the facts of this case. I am in

respectfully agreement with the views expressed by the Gujarat High Court in the said judgment.

31. In my view, Section 4 cannot be read in isolation but has to be read with Section 23 and also Sections 2(b), 2(d) and 2(f) of the said Act. The respondent no.1 mother cannot be restrained from recovering exclusive possession from her son or his other family members for the purpose of generating income from the said premises or to lead a normal life. In my view, if the respondent no.1 mother who is 73 years old and is a senior citizen, in this situation, is asked to file a civil suit for recovery of possession of the property from her son and his other family members who are not maintaining her but are creating nuisance and causing physical hurt to her, the whole purpose and objects of the said Act would be frustrated.

32. In my view, since under Section 23 of the said Act, a senior citizen is entitled to apply for a declaration of gift or transfer of his/her property by any other means given subject to the condition that the transferee shall provide the basic amenities and basic physical needs to such senior citizen and such child or grand child refuses to provide such amenities and physical needs, such senior citizen can apply for declaration of such transaction to be void, such senior citizen can even apply for recovery of possession from her child or grand child in the event of the child refusing to maintain such senior citizen and parents or does not comply with the obligations extending to the needs of senior citizen or such parents to enable such senior citizen or parents to lead a normal life. Such

parents and senior citizen can certainly apply for recovery of vacant possession of the property and for a relief restraining such child or grand child or his other family members who are claiming through such child from entering upon the property of such senior citizen or parents. In my view, there is thus no merit in the submission of the learned counsel for the petitioner that the Tribunal could not have passed an order of eviction against the petitioner and his family members from the tenement owned by the respondent no.1 under the provisions of the said Act.

33. Delhi High Court in the case of Sachin & Anr. Vs. Jhabbu Lal & Anr. (supra) has held that where the house is self acquired house of the parents, son whether married or unmarried, has no legal right to live in that house and he can live in that house only at the mercy of his parents upto the time the parents allow. Merely because the parents have allowed him to live in the house so long as his relations with the parents were cordial, does not mean that the parents have to bear his burden throughout his life. The principles of law laid down by the Delhi High Court in the case of Sachin & Anr. Vs. Jhabbu Lal & Anr. (supra) would squarely apply to the facts of this case. In my view, no child can compel his parents and more particularly senior citizen to allow such child or grand child to stay with him.

22. I respectfully agree with the above view. Taking into consideration the aforesaid ratio, aims, object of the said Act and averments made in the application filed by third respondent, I am

of the view that respondent no.2 is justified in granting relief in favour of respondent no.3. As the object of the said Act is to provide simple, inexpensive and speedy remedy to the parents and senior citizen who are in distress, by a summary procedure, the provisions of the said Act are required to be liberally construed, since the primary object is to give social justice to the parents and senior citizens. In the facts of the present case, it would not be just and proper to ask respondent no.3 to go to the Civil Court and apply for entering her name to the properties in dispute. In that view of the matter, there is no error or illegality in the order impugned in the present petition and relief granted by respondent no.2 cannot be said to be without jurisdiction.

23. There is no substance in the argument of the learned Advocate for petitioners that no opportunity of hearing was given to the petitioners and respondent no.2 ought to have called upon the parties to lead evidence in support of their contention.

The respondent no.2 has mentioned in the impugned order that he has considered pleadings of parties, documents filed on record and oral arguments advanced by them. Nothing is there on record to show that, petitioners wanted to lead evidence and they were not permitted to do so. The petitioners have not sought any permission either to lead evidence or to conduct cross-examination of third respondent. Therefore, these contentions of

the petitioners appear to be afterthought and are liable to be rejected.

24. For the aforesaid reasons, there is no illegality or perversity in the order impugned in the present petition. The writ petition, being devoid of merit, is dismissed. No costs.

25. At this stage, learned Advocate for petitioners submits that interim order passed by this Court on 12-10-2021 may be continued on the same terms and conditions.

26. The learned Advocate for third respondent opposed the prayer on the ground that petitioners have not paid entire maintenance. According to him, there are arrears of maintenance of Rs.1,89,000/- up to June-2022, out of which, petitioners have paid an amount of Rs.1,28,500/-.

27. Interim order passed by this Court shall continue to operate for a period of six weeks from the date of uploading of this order, subject to the condition that, petitioners shall clear the arrears of maintenance, within a period of six weeks from the date of uploading of this order and shall continue to pay regular maintenance to third respondent at the rate of Rs.7000/- per month.

[NITIN B. SURYAWANSHI, J.]